IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 14283 of 2006(A)

PETITIONER:

ALEYAMMA SEBASTIAN, (RETD. HEADMISTRESS,
THARAKKAL A.U.P.S., THUVVUR),
`KRIPA', THUVVUR P.O., MALAPPURAM DISTRICT.

BY ADV. SMT.P.V.ASHA

RESPONDENTS:
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1. THE ASSISTANT EDUCATIONAL OFFICER,
WANDOOR, MALAPPURAM DISTRICT.

2. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE JUDGMENT DATED 14-12-93 IN O.P.NO.3174/89**
EXT.P2	**TRUE COPY OF THE ORDER NO.KDISE/1639/05 OF R1**
EXT.P3	**TRUE COPY OF THE ORDER NO.E-1639/05 DTD. 20-10-05 OF R1**
EXT.P4	**TRUE COPY OF THE REPRESENTATION OF THE PETITIONER TO R1**

/True copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.14283 OF 2006

Dated this the 24th day of January, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

By Ext.P1 judgment dated 14-12-1993, this court resolved the contest between the petitioner herein and the fifth respondent therein in relation to who is entitled to be appointed as Headmistress. Thereafter, the court proceeded to find that petitioner is entitled to be appointed as H.M. from 01-04-1988. Third respondent was directed to appoint the petitioner as H.M. of the school with effect from 01-04-1988 with consequential benefit of salary and other rights.

2. The judgment of this court in Ext.P1 was confirmed by the Division Bench of this court and the petitioner took charge on 21-2-2000. Petitioner retired on 31-03-2005. She was paid salary. She applied for terminal surrender of earned leave and encashment.

By Ext.P2 sanction was given for terminal surrender of 300 days of earned leave as on 31-03-05 on the basis of her appointment with effect from the year 1988. However, this order came to be revised by the very same officer on the basis that petitioner had actually availed the full period of vacation during the years 1988 to 1999 and she is not eligible for Earned Leave for that period and she will be eligible for Earned Leave from June 1999 to the actual date of retirement i.e. 31-01-2005 and there are 156 days of Earned Leave at her credit being final balance as on 31-3-2005.

3. Petitioner preferred Ext.P4 before the AEO. According to her other rights mentioned in Ext.P1 judgment includes the right to get the benefit of surrender of Earned Leave even for the period from 1988-1999 even though she had availed the vacation.

4. Counter affidavit is filed by the second respondent. Therein, it is inter-alia stated that petitioner had actually performed the duties with effect from 21-02-2000 to 31-03-2005. It is stated that as the petitioner had availed the full periods of vacation during the year 1988 to May 1999, Earned Leave benefit cannot be granted to her as per Rule 80 of Part I K.S.R. It is also stated that

Earned Leave will be earned only when she is prevented from enjoying the vacation and actually performing her duties during vacation. As she has not actually performed duties, no Earned Leave will be earned. Learned Government Pleader relies on Rule 80 and 81 of Part I K.S.R.

5. I find no merit in the contention of th petitioner. No doubt, this court no doubt directed payment of salary even though petitioner had actually not worked from 1988 on the basis that petitioner was the rightful claimant. No doubt it is confirmed by the Division Bench also. The question to be considered is what is the meaning to be attached to the works " other rights". The right could only be a legal right. The surrender of earned leave is a mater governed by the rules. No doubt, the case of the petitioner is that it is a non-vacation department as far as the H.M. is concerned. She may have availed vacation during the period for the reason that she was working as teacher at that point of time is the contention of the petitioner. But that is not her fault, she submits. But the fact remains that in order that the petitioner becomes entitled to earned leave, petitioner should not have availed vacation. The undisputed

fact as far as this case is concerned, is that petitioner had availed the benefit of vacation. Proceeding on the basis that petitioner was working as a teacher at that point of time, I would not think that it was in the contemplation of the learned Single Judge and the Division Bench of this court confirming Ext.P1 that the word " rights" would take within its scope even the right to surrender earned leave.

6. I would think in the facts and circumstances of this case that petitioner should not be given the benefit of terminal surrender of earned leave as claimed by her. In such circumstances, writ petition is without any merit and it is dismissed.

K.M.JOSEPH
JUDGE

sv.